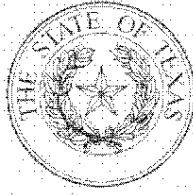


State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 12, 2013

Anna Idsal, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA FACSIMILE NO. (512) 239-5533
AND VIA HAND DELIVERY

RE: SOAH Docket No. 582-12-6347; TCEQ Docket No. 2012-0971-AIR; Application of EOG Resources, Inc. for Air Quality Permit Number 95412 in Cooke County, Texas

Dear Ms. Idsal:

The undersigned Administrative Law Judges (ALJs) have read the exceptions and replies to the ALJs' Proposal for Decision (PFD) in this case.

The Executive Director (ED) submitted exceptions and suggested modifications to the ALJ's PFD and Proposed Order. Although the ALJs may agree with some of the ED's proposed revisions to the PFD, because the Commission adopts the Proposed Order and not the PFD, the ALJs only address the ED's exceptions to the Proposed Order. The ALJs recommend the Commission adopt ED exception numbers 2, 3, 4, 7, 8, 9, 10, 11, 23, 24, 25, and 26 through 30, and the Findings of Fact (FOFs) and Conclusions of Law (COLs) that correspond with those exceptions.

The ALJs recommend the Commission adopt Applicant exception numbers 1, 5, 6, and 8 through 12 and the FOFs and COLs that correspond with those exceptions.

As the Protestant and the Office of Public Interest Counsel (OPIC) re-urge arguments considered in the PFD, the ALJs recommend that the Commission overrule those exceptions.

The Applicant, the ED, and the Protestant addressed the Applicant's commitment to pave roads at the site. The ED addressed the paving of roads in exception numbers 5 and 6 and Applicant addressed the paving of roads in exception numbers 2 and 4. Specifically, the Applicant excepts to proposed FOF No. 28(i), which requires all on-site roads be paved. As explained in the PFD and set out in the Proposed Order, the ALJs recommend that the Commission adopt the Applicant's commitment to pave roads, but apply that commitment to the entire site, as requested by the Protestant. As noted in the PFD at footnote number 59, however, the ALJs do not recommend an enforcement method for this commitment. The ALJs suggest that this matter be addressed at the Commission's agenda for this case.

Based upon the parties' exceptions and responses, the ALJs make the following revisions to their Proposed Order.

FOF No. 1 (Applicant Exception 1) On March 25, 2011, Applicant filed an application with the Commission requesting an air quality permit to construct and operate multiple facilities as part of a sand processing plant at 14596 N. FM 373 in rural ~~southwest~~ northwest Cooke County, Texas (Application).

FOF No. 4 (ED Exception 23) The Notice of Receipt of Application and Intent to Obtain ~~an Air Quality~~ Permit was published in the *Muenster Enterprise* on April 15, 2011, and in the *Saint Jo Tribune* on May 27, 2011, both newspapers of general circulation in Cooke County, Texas. In addition, Applicant arranged for placement of the completed Application for inspection and copying at the Bettie M. Luke Muenster Public Library beginning April 15, 2011.

FOF No. 18 (Applicant Exception 1) The proposed facilities will be located at 14596 N. FM 373 in rural ~~southwest~~ northwest Cooke County, Texas, on approximately 1445 acres. The permitted facilities will consist of hoppers, belt conveyors, bucket elevators, screens, stockpiles, a dryer with a baghouse and truck-load out bins, which will be used to supply sand for oil and gas well operations.

FOF No. 22 (ED Exception 2, Applicant Exception 3) The Draft Permit authorizes the emission of particulate matter (PM), particulate matter equal to or less than 10 micrometers in diameter (PM₁₀), and particulate matter equal to or less than 2.5 micrometers in diameter (PM_{2.5}), as well as ~~ozone (O₃);~~ sulfur dioxide (SO₂); carbon monoxide (CO); ~~nitrogen dioxide~~ nitrogen oxides (NO₂ NO_x); ~~and lead (Pb) and organic compounds (VOCs).~~

FOF No. 34 (ED Exception 4) The dryer will be natural-gas fired, and thus meet BACT for CO, PM, SO₂, and VOC. The dryer will also meet BACT for NO_x.

FOF No. 35 (Applicant Exception 5) The Application incorporates emissions information obtained from the vendor of the dryer baghouse. This information was used

to calculate the predicted emission rates, using commonly-accepted methodology recommended, reviewed, and approved by the ED.

FOF No. 68 (Applicant Exception 6) Emissions from the proposed dryer baghouse were calculated using methodology recommended, accepted, and approved by the ED.

FOF No. 75 (Applicant Exception 8) The proposed facilities will be located at 14596 N. FM 373 in rural ~~southwest~~ northwest Cooke County, Texas, on approximately 1445 acres. The permitted facilities will consist of hoppers, belt conveyors, bucket elevators, screens, stockpiles, a dryer with a baghouse and truck-load out bins, which will be used to supply sand for oil and gas well operations.

FOF No. 76 (Applicant Exception 9) Applicant modeled all of the ~~PM₁₀ and~~ PM₄ emissions as respirable silica in order to compare the maximum modeled off-property concentrations to the long-term annual average ESL

FOF No. 85 (ED Exception 7) The Application made the conservative assumption that 100% of the PM₁₀ and PM₄ emissions expected from the proposed facilities were ~~respirable~~ silica.

FOF No. 86 (ED Exception 8) ~~The ADMT also required that Applicant use~~ Applicant used “refined modeling,” a more complex model with more detail and precise input data. FOF No. 101(a) (ED Exception 24) The ESL for silica was exceeded at off-site locations, for both periods of time—short-term (~~24~~ one-hour) and long-term (annual)—and therefore, a review by TCEQ’s Toxicology Division was required and performed.

FOF No. 87 (Applicant Exception 10) The input data used in the modeling was land-use information (~~urban or rural~~) and surface roughness parameter, topographical elevation data (flat or complex terrain), variable emission rates, building wake effects (downwash), emission point parameters, receptor grid information (receptor ~~grid~~ locations, elevations, and spacing), and meteorological data (standard surface and upper-air observations).

FOF No. 101(a) (ED Exception 24, Applicant Exception 11) The ESL for silica was exceeded at off-site locations, for both periods of time—short-term (~~24~~ 1-hour) and long-term (annual)—and therefore, a review by TCEQ’s Toxicology Division was required and performed.

FOF No. 101(b) (ED Exception 25) The ESL for silica of 0.27 µg/m³ for long-term exposure and 14 µg/m³ for short-term exposure were exceeded. The modeling predicted a maximum annual (long-term) average silica concentration of 0.44 µg/m³ at the GLC_{max}. The modeling also predicted a maximum 1-hour (short-term) average silica concentration off-site as 16.4 µg/m³ at the GLC_{max}.

FOF No. 122 (ED Exception 9) The TCEQ effects review guideline provides for a three tier review to evaluate the health and welfare effects: Tier One occurs only if all off-property short- and long-term GLC_{max} are below the ESLs; Tier Two proceeds if the GLC_{max} occurs on industrial property only and does not exceed the ESL by more than two-fold and the non-industrial GLC does not exceed the ESL; and Tier Three ensues if the GLC_{max} occurs in a non-industrial area or the ESL is exceeded by more than twice.

FOF No. 124 (ED Exception 10) A Tier Three review requires analysis of case-specific factors that have a bearing on exposure: surrounding land use; magnitude of the concentration; the frequency of exceedence; the type of toxic effect (acute or chronic); the margin of safety between the toxicity value and known effects levels; degree of confidence in the toxicity database existing levels of the same constituent; and acceptable reductions from existing ground level concentrations.

FOF No. 130 (ED Exception 11) The magnitudes for the short-term ESL exceedances showed that the $\frac{GLC_{max}}{ESL}$ was exceeded at the GLC_{max} by 1.17 times (or the ratio of the GLC_{max} of $16.4 \mu g/m^3$ to the ESL of $14 \mu g/m^3$) and exceeded at the GLC_{ni} by 1.07 times (or the ratio of the $\frac{GLC_{max}}{GLC_{ni}}$ of $15 \mu g/m^3$ to the ESL of $14 \mu g/m^3$).

FOF No. 132 (Applicant Exception 12) Adverse health effects would not be expected from the exposure to these small magnitudes and frequencies of silica ESL exceedances.

COL No. 1 (ED Exception 26) The Commission has jurisdiction to consider the Applicant's application pursuant to Tex. Health & Safety Code §§ 382.011, ~~392.051~~ 382.051, and 382.0518.

COL No. 3 (ED Exception 27) Proper notice was given as required by Tex. Health & Safety Code § 382.056, Tex. Gov't Code §§ 2001.051 and ~~2004.052~~ 2001.052; 30 Tex. Admin. Code (TAC) § 39.601, *et seq.*


COL No. 12 (ED Exception 28) BACT represents the best technology available, within technical practicability and economic reasonableness, to reduce or eliminate emissions from the facility. 30 TAC § ~~116.10(3)~~ 116.10(1).

COL No. 14 (ED Exception 29) The roads and the quarry are not facilities, and the BACT requirements do not apply to the roads and quarries. Tex. Health & Safety Code §§ 382.003 and ~~382.0578~~ 382.0518.


COL No. 24 (ED Exception 30) No person in Texas may allow or permit emissions of SO_2 from a source operated on a property to exceed a net ground level concentration of 0.4 part per million by volume averaged over any 30-minute period. 30 TAC § ~~112.4~~ 112.3.

Therefore, the ALJs recommend that the Commission adopt changes to FOFs 1, 4, 18, 22, 34-35, 68, 75-76, 85-87, 101, 122, 124, 130, and 132 and COLs 1, 3, 12, 14, and 24. The ALJs recommend all other exceptions be overruled.

Sincerely,



Penny A. Wilkov
Administrative Law Judge



Travis Vickery
Administrative Law Judge

PAW/TEV/ap/mle
Enclosures
cc: Service List

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STYLE/CASE: EOG RESOURCES, INC
SOAH DOCKET NUMBER: 582-12-6347
REFERRING AGENCY CASE: 2012-0971-AIR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
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